

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-629

June 7, 2000

BELL ATLANTIC-MAINE
Alternative Form of Regulation Filing
1999 Annual AFOR

ORDER ADDRESSING
SCHOOLS & LIBRARY
ACCRUAL

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. INTRODUCTION & SUMMARY

In this Order we decide that Bell Atlantic (BA or BA-ME) must decrease the maximum allowed level of its rates (the price regulatory index or PRI) to substitute for BA's present accrual of funding for schools and libraries information services, which terminated on May 31, 2000. We also decide that Bell Atlantic does not need to reduce any of its present rates because those rates are already below the revised maximum rate level, but that it should adjust the actual price index (API) to reflect its present actual price level.

II. BACKGROUND

In *Frederic A. Pease et. al., Request for Commission Action to Investigate the Level of Revenues Being Earned by New England Telephone and Telegraph Company and Determination of Whether Toll and Local Rates Should be Reduced*, Docket No. 94-254, we found that Bell Atlantic should reduce its rates by \$14.446 million annually. We also ruled, however, that \$4 million of the total annual reduction should not be applied to immediate rate reductions, but should instead be accrued for a fund designed to provide connections to the internet and other information services for schools and libraries. The actual reduction in rates for services offered to the public, therefore, was \$10.446 million. The Order set a maximum of \$20 million accrual for school and library funding. Accordingly, the accrual, at a rate of \$4 million per year, would last for five years. The rate reductions and accrual under *Pease* became effective on June 1, 1995. Bell Atlantic accrued \$20 million for the schools and libraries funding by May 31, 2000.

The *Pease* case is the most recent revenue requirement rate case that we have conducted for Bell Atlantic. It also served as the starting point for rates under the alternative form of regulation (AFOR) ordered in *Public Utilities Commission, Investigation into Regulatory Alternatives for the New England Telephone and Telegraph Company*, Docket No. 94-123, Order (May 15, 1995) and that is currently in effect for Bell Atlantic. The AFOR began on December 1, 1995, six months after the effective date of the rate changes implemented pursuant to *Pease*. It is scheduled to

end on November 30, 2000. Accordingly, there is a 6-month lag between the 5-year period to accrue \$20 million for schools and libraries and the 5-year AFOR.

In the order approving Bell Atlantic's most recent AFOR rate change filing, issued on November 19, 1999,¹ we noted that the accrual would reach \$20 million on May 31, 2000 and would terminate at that time. We stated that "rates should be reduced by \$2 million (\$4 million annual effect) for the remainder of the AFOR year, and we ordered Bell Atlantic to file a proposal to address "the necessary rate reduction" on or before February 1, 2000.

III. ARGUMENTS BY BELL ATLANTIC AND THE PUBLIC ADVOCATE; PUBLIC ADVOCATE EXCEPTIONS

On February 1, 2000, Bell Atlantic filed a letter proposing that it should not be required to reduce its existing rate level on June 1, 2000. Bell Atlantic presented two arguments. First, it argued that requiring it to reduce rates now might constitute "prohibited single-issue ratemaking."² Second, it argued that it has already reduced its rates to a level that is less than the level that would be required if the Commission ordered Bell Atlantic to reduce its rates by \$4 million. It points out that it reduced its rates for Pine Tree Calling Service (Pine Tree) by approximately \$5.7 million in October of 1999,³ in addition to rate reductions that were included in its 1999 AFOR filing.

On February 8, 2000, the Public Advocate filed comments contesting both of BA-ME's arguments. Following an Examiner's Report that was issued on May 19, 2000, the Public Advocate filed exceptions. With leave granted by the Hearing Examiner, Bell Atlantic responded to those exceptions.

¹Corrected and Further Amended Orders were issued on December 3 and 9, 1999.

²In *New England Telephone and Telegraph Company, Proposed Increase in Rates*, Docket No. 82-6, NET filed a "limited" rate case seeking "additional revenues only to offset increases in three specific categories of expense" The Commission, in an Order of Dismissal (May 11, 1982), ruled that without evidence of changes in other expenses and revenues, it would be impossible to determine whether the resulting overall rates for NET would be "just and reasonable," as required by 35-A M.R.S.A. § 301 (then 35 M.R.S.A. § 51). Accordingly, approving the "limited" rate changes without an examination of NET's overall revenue requirement would be unlawful.

In *New England Telephone and Telegraph Company d/b/a NYNEX, Request for Recovery of BSCA Shortfall Through an Increase in Basic Rates*, Docket No. 96-753, Order at 3-4, we refrained from applying the doctrine because "we have recently examined NYNEX's financial position [in the *Pease* case] and adjusted its overall rates."

³The rate reduction for Pine Tree is explained in greater detail at Part IV.B below.

The Public Advocate raised procedural issues in both its February comments and its exceptions. The February comments argued that we should initiate contempt proceedings against Bell Atlantic because the November 16, 1999 order required it to file a proposal to “address the necessary rate reduction.” According to the Public Advocate, Bell Atlantic’s filing failed to comply with the order and constituted a request for reconsideration of the November 16 order that was untimely under Chapter 110, § 1004 of the Commission’s rules because it was filed more than 20 days after any of the three orders in this case issued on November 9, December 3 and December 9, 1999.

The Public Advocate’s exceptions argued again that Bell Atlantic’s filing was in substance an untimely motion for reconsideration. The exceptions also argued that the Examiner’s Report recommends reversal of the prior order “without providing the parties with notice and an opportunity to be heard,” and that the Commission should comply with the procedures outlined in Chapter 110, § 1004.

With regard to the “single-issue ratemaking” issue, the Public Advocate’s February comments argued:

If not for the School and Library Project, Bell Atlantic’s rates would have been \$4 million lower for each of the five years of the AFOR. Bell Atlantic should be indifferent as to whether those ratepayer dollars, which were diverted from direct rate reductions, are expended for school and library technology or for rate reductions. However, the Company is now putting forward an argument that would redirect those overearnings to the pockets of its shareholders. Bell Atlantic’s argument is that the Commission’s December 3, 1999 Order initiates some sort of new revenue adjustment not previously made.

With regard to Bell Atlantic’s second argument, the Public Advocate’s February comments stated:

Bell Atlantic’s second argument is that its voluntary toll reductions necessitated by competitive pressure in the intraLATA toll market should *offset the unspent school and library funds* and be computed in the *PRI*. (emphasis added)

The italicized portion of the quotation, along with other statements in the Public Advocate’s February comments, indicate that the Public Advocate believes that what is at issue here is the unspent portion of the \$20 million that will be accrued by May 31, 2000. That is not the issue. That issue has been addressed in an order issued in a separate proceeding. *Public Utilities Commission, Investigation into Bell Atlantic-Maine’s Alternative Form of Regulation*, Docket No. 99-851, Order (April 10, 2000).

What is at issue here is whether Bell Atlantic must reduce its rates because of the termination of the school and library accrual once \$20 million has been reached.⁴

The Public Advocate's February comments also argued:

If Bell Atlantic has voluntarily reduced the rates of its Pine Tree State calling plan or any other services, its only lawful means of recovering those revenue reductions is by increasing the prices of other services to the extent permitted under the pricing rules of the AFOR. There is no pricing rule that allows the Company to invade ratepayer-owned funds to recover voluntary price reductions. Bell Atlantic deliberately eliminated the time-of-day restrictions of its Pine Tree plan after the last AFOR filing for its own strategic purposes.

The Public Advocate's exceptions to the Examiner's Report make a similar argument:

Bell Atlantic is not entitled to now amend its AFOR filing to include those voluntary rate reductions that it failed to include in [the annual AFOR filing in] September 1999.

. . .

[T]he Company should not be allowed to use those rate reductions as an offset to its \$2 million windfall⁵ resulting from the end of the accrual of school and library monies. The \$2 million accrual represented by current rates that no longer fund the School and Library Project represent overearnings determined in Docket No. 94-254 and must be returned to ratepayers in the form of reduced rates. By contrast, Bell Atlantic's withdrawal of the time-of-day restrictions on the Pine Tree Calling Plan are a result of the pressures that Bell Atlantic has been experiencing in the

⁴In addition, contrary to the Public Advocate's statement, Bell Atlantic is not urging that the "voluntary toll reductions" be "computed in the *PRI*." (emphasis added) The *PRI* (price regulatory index) is the index under the AFOR that establishes the maximum allowed level of rates. Bell Atlantic is in effect arguing that the reductions should be recognized in the actual price index (*API*), which measures the overall rate level. The *API* must always be lower than the *PRI*.

⁵Although the school and library accrual and any required rate reduction both have an annual effect of \$4 million, a rate reduction for the remaining six months of the AFOR would be in the amount of \$2 million.

competitive market for in-state toll services. Therefore, that rate reduction represents a voluntary tariff change initiated by the Company after it had prepared and submitted its Annual AFOR filing. Bell Atlantic failed to include that in the annual AFOR filing that it submitted in September 1999. There is no provision in the Commission's existing AFOR that suggests that, midway through an AFOR year, Bell Atlantic is permitted to adjust the PRI simply because the pressures of competition have forced the Company to reduce its toll rates.

We understand the Public Advocate's statements to oppose allowing Bell Atlantic to claim credit for a "voluntary" rate reduction, that has already taken place, toward any rate reduction that we might require as a result of the termination of the school and library accrual.

On June 2, 2000, the Public Advocate filed a letter that raised another procedural objection. The Public Advocate claimed that Bell Atlantic's reply to its exceptions (filed on May 26 with leave granted by the presiding officer) violated the provisions of Chapter 110, § 760-A (a) of our rules.

IV. DISCUSSION

A. Procedure

We do not find it necessary to decide whether Bell Atlantic's February 1, 2000 filing was a motion to reconsider. The Public Advocate suggests that if the filing were such a motion, the Commission failed to provide an adequate right to be heard. It also suggests that Bell Atlantic should be held in contempt because it filed an untimely motion for reconsideration rather than comply with the order.

We do not believe that Bell Atlantic's filing, which contained at least one non-frivolous argument that its rates were already in compliance with any required reduction, is so unresponsive to the order as to constitute contempt.⁶

Whether Bell Atlantic's filing constitutes a motion to reconsider is of no procedural consequence. The Public Advocate received notice of Bell Atlantic's argument through its filing and responded to those arguments. The Public Advocate also had a further opportunity to respond to Bell Atlantic's argument and to a

⁶If, in the future, Bell Atlantic has some doubt about whether it will be contesting the provisions of an order, rather than directly complying with it, we suggest that it should err on the side of caution and request reconsideration. It should do so sufficiently in advance of the date for compliance with the order to allow the Commission to address its argument.

recommended decision of the Examiner in its exceptions. No greater rights would have been afforded under Chapter 110, § 1004 or 35-A M.R.S.A. § 1321.⁷

With regard to the Public Advocate's claim that BA's reply to its exceptions violated Chapter 110, § 760-A of our rules, that section states that after the issuance of an Examiner's Report and the time for filing of exceptions:

...no person shall make any direct or indirect communication to any commissioner, presiding officer, or other advisory staff member in connection with any potential or proposed decision ... except as permitted by order or prior approval of the Commission or presiding officer.

The Public Advocate filed its exceptions to the Examiner's Report on May 25. On May 25, BA filed a letter stating it did not except. On May 26, at 10:09 AM, BA sent an e-mail to the presiding officer (but not to the Administrative Director) requesting leave to file a reply to the Public Advocate's exceptions. The Public Advocate's letter claims that BA did not send the Public Advocate a copy of the e-mail, and that the Public Advocate did not receive notice of BA's request until after the presiding officer had granted BA's request. The e-mail that BA sent to the hearing examiner indicates, however, that BA simultaneously sent it to the Public Advocate. The e-mail has been printed and filed with the case.

BA did not violate the provisions of section 760-A. As required by the rule, BA asked for leave to file the reply to the Public Advocate exceptions, and the presiding officer granted that request.⁸

The OPA apparently objects to the fact the presiding officer granted leave to BA to file a reply to the Public Advocate's exceptions. The Public Advocate argues that, rather than filing simultaneous exceptions, "in keeping with the Commission's prescribed fair procedure," BA was trying to gain an "unfair advantage" by waiting until after the Public Advocate had filed its exceptions. We disagree. As characterized in its request for leave, BA sought to reply to the Public Advocate's exceptions. BA

⁷Although Chapter 110, § 1004 has a 20-day time limit, Section 1321 allows the Commission to reopen and modify any order "at any time," subject to notice and an opportunity to present argument or evidence, as determined by the Commission.

⁸The Public Advocate separately argues that BA violated the ex parte rule in section 760. That section prohibits any communication "with any commissioner, presiding officer, or other advisory staff member in connection with any potential decision in the case...except upon notice and opportunity for all parties to participate as provided in these rules *or pursuant to order of the presiding officer.*" (emphasis added) The presiding officer did issue such an order. As discussed in connection with other procedural objections made by the OPA in this case, the OPA had adequate opportunity to present its views in this case. Having received BA's proposed reply comments, the Public Advocate did not request leave to file further comments of its own.

apparently had not filed exceptions because the ER had agreed with at least one of its major arguments. If BA had attempted to file delayed exceptions or comments directly supporting the ER, a different ruling may have been appropriate. BA obviously could not respond to the Public Advocate's exceptions until after they were filed.

Section 760-A vests the Commission or the presiding officer with the discretion to allow a post-exception filing under proper circumstances. We find that permitting BA to file a reply to the Public Advocate's exceptions was appropriate in this case, although there may be circumstances, e.g., large, multi-party cases, where numerous replies to other parties' exceptions would be too cumbersome.

The Public Advocate argues that because the proposed comments were filed with the request for leave, the request was a "sham." Such inclusion is routine, if not always the best practice. The proposed comments were included as an e-mail attachment and required a recipient to double-click on an icon to open and read the attachment. We recommend that parties in the future file a request for leave with the Administrative Director rather than the hearing examiner, and that they make specific reference to the provisions of Chapter 110, § 760-A in order to minimize the chance that a person listed in section 760-A (b) who is prohibited from reading the communication (absent leave being granted) will inadvertently read it.

B. The Merits

The *Pease* Order required a combination of rate reduction and school and library accrual in the amount of \$14.446 million; absent the *Pease* Order, Bell Atlantic's rates would be \$14.446 million higher. For the period June 1, 1995 through May 31, 2000, the combined annual amount of rate reduction plus schools and library accrual is exactly that amount. After May 31, 2000, however, Bell Atlantic will not accrue school and library funding. Thus, between June 1, 2000 and November 30, 2000, absent any action by the Commission with regard to Bell Atlantic's rate levels, the total of rate reduction and school and library accrual occurring as a result of the *Pease* order (and the current PRI, which is derived from the *Pease* order) would be \$10.4 million annually rather than \$14.4 million required by the *Pease* decision.

We address both of Bell Atlantic's arguments. We do not view them as in the alternative. The first argument (concerning possible "prohibited single-issue ratemaking") is in effect one that Bell Atlantic should not be required to reduce its rates by \$4 million in order to counteract the effect of the termination. The second argument (concerning its present actual rate level) is in effect one that even if the maximum allowed level of rates is reduced by \$4 million, Bell Atlantic's present rates are lower than that level.

1. Single-Issue Ratemaking

We reject Bell Atlantic's argument that requiring it to reduce rates, to account for the termination of schools and library accrual, might constitute "prohibited

single-issue ratemaking.” Our rejection of Bell Atlantic’s argument leads us to the further, related conclusion that the PRI must be recalculated to reduce the maximum allowed level of rates by \$4 million.

Bell Atlantic argues that:

The intervening five years between the test year in the last rate case and the final six months of the AFOR plan likely have caused fluctuations in BA-ME’s test year cost of service (*i.e.*, revenues, expenses and investments as projected back in 1995). Accordingly, making a rate adjustment at this time solely for the elimination of a single expense item arguably entails prohibited single-issue ratemaking.

The *Pease* Order required Bell Atlantic to reduce its *rates* by \$14.4 million annually, but, in substitution for part of the rate reduction, Bell Atlantic would accrue \$4 million annually for school and library funding. A rate case order establishes “permanent” rates. See *New England Telephone and Telegraph Company v. the Public Utilities Commission*, 354 A.2d 753, 761-2 (Me. 1976). “Permanent” (really, “indefinite”) rates cannot be changed except pursuant to an order by the Commission, *e.g.* in a new rate case. Bell Atlantic is presently under an alternative form of regulation (AFOR), also known as “incentive” regulation. Instead of periodic rate cases, the AFOR order in Docket No. 94-123 allows Bell Atlantic’s overall rate level to change annually pursuant to a formula (the price regulatory index, or PRI) that takes into account national general price changes (as measured by the GDP-PI), Bell Atlantic’s targeted productivity (4.5%) and certain “exogenous” changes. The AFOR is designed to replace traditional regulation, in particular the notion that there must be a balance between costs and revenues.⁹ A primary goal of “incentive regulation” is to create an incentive to increase efficiency; breaking the link between costs and revenues promotes that incentive. The PRI under the Bell Atlantic AFOR is not directly related to Bell Atlantic’s current actual costs. Nevertheless, in establishing maximum rates it serves as a surrogate for costs. It is derived from the revenue requirement established in the *Pease* order, as modified by the annual AFOR adjustments. The overall rate level ordered by the *Pease* order served as the starting point for the initial PRI under the AFOR..

Pease required Bell Atlantic to implement a combined rate reduction and school and library funding accrual that total \$14.446 million. Bell Atlantic’s argument that we should not require it to reduce rates (because such an order might constitute “impermissible single-issue ratemaking”) is actually an argument that the *Pease* order

⁹The fact that the AFOR recognizes a limited number of major “exogenous” changes is itself a departure from the restrictions against “single-issue rate cases.” Bell Atlantic did not raise the single-issue rate case problem when, in the 1998 AFOR filing, it requested recovery, as an exogenous event, of expenditures related to the ice storm of January, 1998.

should be modified to require a combination of rate reduction and school and library funding in the total of \$10.446 million rather than \$14.446 million. Nothing in the PRI formula, the AFOR order, or incentive regulation generally suggests that it is possible, in effect, to amend the original starting point, yet Bell Atlantic, in its “single-issue rate case” argument, suggests exactly such a result. Substituting a reduction in rates of \$4 million for the school and library accrual, which must terminate, simply fulfills the original mandate of the *Pease* order, which still serves as the basis for present maximum rate levels, as modified over time by the PRI. A rate reduction at this time is nothing more than a continuation of the original total amount of rate reduction and accrual ordered by *Pease* (\$14.446 million), substituting a rate reduction of \$4 million for further accrual at the same level. We conclude that adjusting Bell Atlantic’s maximum rate level not only is *not* “prohibited single-issue ratemaking,” but that failure to make that adjustment would in effect amend the original *Pease* order, and subsequent PRIs derived from that order, to allow an increase of \$4 million in the maximum allowed rate level. To the extent that the Public Advocate argues that failure to reduce the maximum rate level to reflect the end of the school and library is not “prohibited single-issue ratemaking,” we agree.

The point that combined reductions and accruals should continue at the rate of \$14.4 million is perhaps best illustrated by an alternative way that we could have used to calculate the initial PRI. The starting point for initial PRI was “100.” However, “100” represented a maximum rate level that was \$10.446 million below the rates in effect prior to the *Pease* decision. Alternatively, we could have set the initial PRI (of “100”) at a rate level that was \$14.4 million less than the rates that were in effect prior to the *Pease* decision, and simultaneously allowed Bell Atlantic a credit toward meeting the PRI for the annual \$4 million in school and library accrual. When the accrual ended on May 31, 2000, it would be clear that Bell Atlantic would have to reduce rates by \$4 million to substitute for the credit granted for the accrual. Under those circumstances, an argument about single-issue ratemaking would not even have superficial appeal.

The illustration suggests another conclusion: that the PRI should be adjusted to reduce the maximum overall rate level by \$4 million. The maximum allowed level of rates will be \$4 million less than the maximum allowed level prior to June 1, 2000, because the \$4 million school and library accrual will be replaced by a \$4 million rate reduction. Stated alternatively, the PRI should be revised to reflect the full \$14.4 million reduction required by the *Pease* decision. It is possible, of course, that under a revised AFOR (which we have under consideration), the PRI and API may not continue either in their present or modified form. In the event, however, that the present PRI and API have some relevance in a future AFOR, we view their recalculation as a reasonable precaution.¹⁰ In the absence of a recalculation of the PRI (assuming continued

¹⁰Because Bell Atlantic must recalculate the PRI for the reason stated above, we will also require it to make the further adjustment described in the third paragraph of the November 19, 1999 Order at this time rather than in its next AFOR filing. This adjustment is explained more fully in the Ordering Paragraphs. As discussed in Part IV.B, Bell Atlantic will also need to make changes to the API.

relevance of the PRI), Bell Atlantic in its next AFOR filing could claim that its rates as of November 30, 2000 were \$5.7 million below the required level. In fact, as acknowledged by Bell Atlantic in its February 2000 filing, once the school and library accrual ends, its rates will be \$1.7 million below the level required by *Pease*, as modified by the ongoing PRI calculations.¹¹

2. Recognition of Rates That Are Below the Required Level

Bell Atlantic's second argument has substantially more merit. Bell Atlantic argues that its rates are already \$5.7 million below the PRI presently in effect. The PRI sets the maximum rate level. After adjustment of the PRI to reflect the end of the school and library accrual, Bell Atlantic's rates will still be \$1.7 million below the PRI.

On September 1, 1999, in this docket, Bell Atlantic made its fourth annual AFOR filing. That filing included rate reductions of \$12.16 million. Net reductions of \$10.4 million had already taken place during the 1998-1999 AFOR year, and Bell Atlantic correctly included those rate changes in its recalculation of the API (actual price index). Bell Atlantic proposed another set of reductions of \$1.76 million, to take effect on December 1, 1999. As a result of the existing and proposed reductions, Bell Atlantic's overall rates (as measured by the API) were slightly below the recalculated PRI, which had decreased from the prior year.

In addition to the rate changes included in the AFOR filing and the recalculated API, Bell Atlantic, in October of 1999, reduced the rates for Pine Tree Calling Service, a residential long distance discount service. The Pine Tree rate reduction took the form of the elimination of the hours during which the Pine Tree rate (priced at 9¢ per minute) was not available. Those hours were 9 a.m. to Noon and 6 p.m. to 9 p.m. on weekdays. Prior to the elimination of those rate-blocked hours, customers paid regular toll rates during those hours. In calculating the effect of the rate

¹¹Bell Atlantic states:

Thus, BA-ME's present toll rates are already lower by \$1.7 million (\$5.7 million - \$4 million) on an annual basis than its rates would have been had the \$4 million accrual not been established at the outset of the AFOR. Ratepayers – today – are already enjoying rates that fully reflect: (1) the effect of reducing BA-ME's rates at the outset of the AFOR by the full \$14.446 million as if the accrual were never established; (2) the five year, cumulative impact of the AFOR's PRI and; (3) a further annual toll reduction of \$1.7 million.

decrease during the blocked periods, Bell Atlantic substituted 9¢ per minute for various toll charges that Pine Tree State customers incurred during the blocked periods.¹²

Because Bell Atlantic did not include the Pine Tree rate reduction in the AFOR filing, the present API, approved in the November 16th order in this docket, does not accurately reflect the actual current rate level. The reason that Bell Atlantic did not include the Pine Tree reduction in its annual filing is not clear on the record of this case. It seems likely that Bell Atlantic would have known of the Pine Tree reduction in time for the September 1 AFOR filing. At that time, it knew of the rate changes it was proposing for effect on December 1, 1999, as part of the AFOR filing, yet the Pine Tree reductions were planned for October.

The Public Advocate argues that Bell Atlantic should not be allowed to claim credit under the AFOR for the Pine Tree Calling rate reduction because it failed to include that reduction in the 1999 AFOR filing and because the reduction was “voluntary,” in response to market pressures. We see no merit to the Public Advocate’s arguments.

The first argument (failure to include the Pine Tree reduction in the 1999 AFOR filing) can be read as either an argument that Bell Atlantic is never permitted to use mid-year reductions toward required end-of-year rate reductions, or as a simple argument of waiver if it fails to claim credit at the first opportunity.

The AFOR has always allowed Bell Atlantic to reduce rates between annual AFOR filings. By definition, mid-year reductions are “voluntary.” Bell Atlantic is entitled to (indeed, should) claim credit for mid-year reductions in the API calculation that is included in the AFOR filing for the following year. The AFOR Orders specifically allow voluntary mid-year rate reductions to be included in the annual API calculation in satisfaction of an annual required reduction in rates. As discussed above, Bell Atlantic included rate reductions that took effect during the 1998-1999 AFOR year in the September 1, 1999 AFOR filing. A contrary rule (that Bell Atlantic could not use voluntary mid-year reductions to satisfy required end-year reductions) would obviously deter Bell Atlantic from reducing rates during the course of an AFOR year. If Bell Atlantic delayed all rate decreases until the end of the AFOR years, ratepayers would be worse off.

The AFOR pricing rules allow Bell Atlantic to reduce rates for any service. Bell Atlantic’s motive (market-induced or otherwise) for reducing a rate, or for applying rate reductions to one service rather than another is irrelevant. These policies

¹²Consistent with prior practice and orders of the Commission, Bell Atlantic did not attempt to account for any revenue effects of calling stimulation that might occur as a result of decreased rates during the formerly blocked periods. Any such stimulation would offset some of the decrease in revenue due to the reduced rates, but any attempts to estimate stimulation would be speculative.

apply whether the rate reductions are required as part of an AFOR filing or are voluntary mid-year reductions.

The AFOR policies described above have existed since the beginning of the AFOR. We therefore reject the Public Advocate's arguments that are based on the fact that the Pine Tree reduction occurred during the AFOR year, that it may have been "voluntary," and that it may have been induced by competitive market conditions. Accordingly, the Public Advocate's argument is reduced to one of pure and simple waiver: Bell Atlantic should not now receive credit for the Pine Tree rate reductions because it did not include them in the API calculation in the 1999 AFOR filing. The Public Advocate states that Bell Atlantic "should not be accorded 'two bites at the apple.'" A "one chance only" waiver ruling would be a mechanistic application of a rule that may not even exist and would impose an unduly punitive consequence.¹³ It would also ignore the substantive reality of actual rates.

We decide that it is irrelevant whether Bell Atlantic included the Pine Tree reduction in the 1999 AFOR filing. Bell Atlantic's rates are what they are, despite the presently inaccurate API. If Bell Atlantic had included the Pine Tree reduction in the 1999 AFOR filing and API calculation, it would still be able to show, in the context of this proceeding, that its rates are presently \$5.7 million less than the maximum allowed level permitted by the PRI.

The illustration we used previously to discuss Bell Atlantic's single-issue rate case argument, and to decide that the PRI must be reduced (Part IV.B.1), also has analytical value for this issue. Again, we will assume that the original PRI was set to start at a level of \$14.446 (rather than \$10.446 million) below pre-*Pease* rates, and, when the accrual (and the credit for the accrual) ended, Bell Atlantic's overall rates (as measured by the API) were \$1 million below the maximum rate level allowed by the PRI. Under that hypothesis, Bell Atlantic would have a strong argument that it

¹³Our orders do not specifically prohibit Bell Atlantic from refraining from claiming a credit for a rate reduction if other proposed and existing rates included in the AFOR filing and API calculation already result in an API that is less than the PRI. Nevertheless, the December 23, 1997 AFOR Order (Docket No. 94-123) states:

"Proposed rates" [for the API calculation] include all rates that Bell Atlantic proposes will be in effect for the following year, including those presently in effect and *including any that were changed during the current year.* (emphasis added)

We strongly encourage Bell Atlantic to include actual rates in future AFOR filings (if any), as the calculations for the new API and the maximum allowed revenue, under the methodology established in the 1997 order, depend on the accuracy of the prior API.

would only have to reduce rates by \$3 million, that is, only by the amount necessary to ensure that the API was no greater than the PRI.

The hypothesis, and a ruling that Bell Atlantic may rely on its present actual rate level, are closely analogous to another existing AFOR policy, the “banking” provision. “Banking” is described in the December 23, 1997 AFOR Order in Docket No. 94-123:

If, at the beginning of an AFOR rate year, the API is below the PRI, Bell Atlantic may “bank” the difference. At the beginning of the following AFOR rate year, Bell Atlantic does not have to reduce its aggregate prices by the amount of the change in the PRI; rather, it must reduce its prices only by the amount that is necessary to make sure that the API is no greater than the PRI.¹⁴

As in the case of whether Bell Atlantic should receive credit for mid-year rate reductions, the absence of a “banking” provision would deter Bell Atlantic from maintaining a price level (API) below the maximum level (PRI). We find that it is immaterial that Bell Atlantic failed to “bank” the Pine Tree Calling rate reduction in the 1999 AFOR filing and now seeks to use it in a subsequent recalculation of the API.

In deciding to accept Bell Atlantic’s argument, we give weight to the fact that the reduction to the Pine Tree rate has been in effect since October, 1999. The reduced Pine Tree rate provided a clear benefit to Bell Atlantic’s customers beginning seven months prior to any required reduction in rates to account for the end of the school and library accrual. Bell Atlantic’s overall rates were (on an annual basis) \$5.7 million less than the required level for the 6-month period between December 1, 1999 and May 31, 2000.

For the foregoing reasons, we will not require Bell Atlantic to reduce rates further to account for the end of the accrual of funding for schools and libraries.

As described in the Ordering Paragraphs, Bell Atlantic shall revise the API to reflect current rate levels for Pine Tree State Calling Service. Under the revised PRI and API, Bell Atlantic’s overall rates (as reflected in the API) will be \$1.7 million less the maximum level allowed by the revised PRI.

Wherefore, we

1. ORDER New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine, to end the accrual of funding school and library connectivity, effective May 31, 2000;

¹⁴The original AFOR Order in Docket No. 94-123 (May 15, 1995) states the rule in reverse, i.e., for foregone rate increases under a PRI that is increasing.

2. ORDER New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine, on or before July 5, 2000, to:
 - a. recalculate the price regulatory index (PRI) to
 - (i) account for the termination on May 31, 2000 of the \$4 million annual accrual for the funding of schools and library connectivity; and
 - (ii) account for the depreciation on ice-storm-related capital additions that were allowed as an exogenous change in the 1998 AFOR filing, as explained in the second paragraph of the Order issued in this Docket on November 19, 1999; and
 - b. recalculate the actual price index (API) to account for the reduction in rates to Pine Tree Calling Service that became effective in October, 1999, using billing units for March of 1999; and,
3. ORDER that the Director of Finance may approve the recalculated PRI and API.

Dated at Augusta, Maine, this 7th day of June, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.